



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

JUN 12 2015

FILE #:

PETITION RECEIPT #:

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematics teacher. The petitioner taught in Maryland for [REDACTED] and for [REDACTED] from August 2007-July 2011

[REDACTED] from August 2011-June 2013. Since August 2013, the petitioner has been working for [REDACTED] in West Virginia. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree.¹ The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The petitioner has established that her work as a mathematics teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner’s work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish her past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner’s own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner’s area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether this petitioner’s contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

II. ANALYSIS

The petitioner filed the Immigrant Petition for Alien Worker (Form I-140), on June 28, 2013. The director determined that the scope of the petitioner’s work and her impact on the field did not satisfy the second and third prongs of the *NYSDOT* national interest analysis.

¹ The petitioner earned her Master of Education degree from [REDACTED] in December 2012.

On appeal, the petitioner asserts, through counsel, that her “career as a highly qualified Mathematics teacher” in three different school jurisdictions demonstrates that her capabilities are “national in scope.” The petitioner, however, has not shown the benefits of her impact as a mathematics teacher beyond her own students and, therefore, that her proposed benefits as an educator are national in scope. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. *NYSDOT* specifically identifies a schoolteacher as an example of a meritorious occupation that lacks national scope. The petitioner does not address this finding in the precedent decision, stating instead that her service as a schoolteacher in the Philippines, Maryland, and now West Virginia “warrants waiver of the job offer.” The petitioner, however, has not submitted any documentary evidence showing that the impact of her work as a mathematics teacher extends beyond the students at the schools where she has taught.

The petitioner mentions the national scope of her proposed employment through the “national priority goal of closing the achievement gap.” The petitioner, however, has not shown that her efforts have significantly closed that gap in [REDACTED] or nationally. The national importance of “education” as a concept, or “educators” as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT* 22 I&N Dec. at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold.

The petitioner’s appellate submission includes general information about the “Philippine Educational System,” the Maryland State Department of Education, and the West Virginia Board of Education. The appeal brief quotes extensively from the submitted information, but does not explain how the petitioner’s past record of achievement as a schoolteacher demonstrates her eligibility for the national interest waiver. The submitted documentation does not establish that the petitioner, individually, is responsible for any educational improvements at a national level. In addition, the record lacks specific examples of how the petitioner’s work as a mathematics teacher has influenced the field of education as a whole.

The petitioner previously submitted letters of support from her educators at [REDACTED] parents of students she has taught, and individuals who worked with her at [REDACTED] and [REDACTED]. These individuals attested to the petitioner’s talent, dedication, and contributions to her schools, but they did not indicate that the petitioner has

had the wider impact and influence necessary to qualify for the national interest waiver under *NYS DOT*.

For example, [REDACTED]
stated:

[The petitioner] is assigned to handle Algebra and Geometry for middle school and AP [Advanced Placement] Calculus for high school. As her supervisor, I observed [the petitioner's] commitment in providing students' rigorous lessons, setting high expectations and holding students accountable as well to ensure student success. Her lessons were characterized by hands-on experience that required students to think through processes and be able to explain results using appropriate vocabulary. She also established an effective style of instructional delivery tailored to relate Mathematics and technology that fostered improvement in students' participation and achievement. Additionally, [the petitioner] demonstrated leadership in the Mathematics Department as a collaborator and leader amongst her peers by sharing teaching strategies through demonstration lessons.

Mr. [REDACTED] commented on the petitioner's effectiveness as a mathematics teacher, but did not provide specific examples of how the petitioner's influence as a schoolteacher was national in scope. In addition, while Mr. [REDACTED] stated that the petitioner has demonstrated leadership in the school's Mathematics Department and that her instructional style has fostered improvement in her students' academic performance, there is no documentary evidence showing that the petitioner's work has affected the field as a whole.

The petitioner also submitted a letter from [REDACTED] retired Principal, [REDACTED] who stated that he supervised the petitioner for four years. Mr. [REDACTED] continued:

Compared to most teachers, [the petitioner] came with a very strong background in Algebra, Calculus, Trigonometry and Geometry that [s]he had acquired in the Philippines with her Engineering background during her undergraduate studies. . . . She studied Education and majored in Mathematics in depth here in the U.S. while teaching a diverse group of students with different learning styles and capabilities in mathematics. As a result, she made the Maryland State Assessment [MSA] scores of all her students increase beyond exceptions and made [REDACTED] one of the best schools in [REDACTED].

Mr. [REDACTED] mentioned the petitioner's background in mathematics and engineering, but any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for labor certification. *NYS DOT*, 22 I&N Dec. at 220-221. Any assertion that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. In addition, while Mr. [REDACTED] asserted that the petitioner improved her students' MSA scores and helped make [REDACTED]

School one of the best schools in [REDACTED], he did not indicate that the petitioner's work has had, or will continue to have, an impact beyond the schools where she has worked.

The petitioner previously submitted her academic records, employment verifications, her Maryland Educator Certificate, teaching licenses for Virginia and West Virginia, and an "Award of Tenure" from [REDACTED]. Educational degrees, occupational experience, licenses and professional certifications, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (F), respectively. However, in this instance the petitioner is seeking a waiver of the job offer as a member of the professions holding an advanced degree. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYS DOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence demonstrating that the petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify the petitioner for the national interest waiver.

Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has not demonstrated that the [REDACTED] tenure award that she received in 2012 has more than local or institutional significance. In addition, the petitioner previously submitted various certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the petitioner has not shown that the proposed benefits of her work are national in scope. In addition, the petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement. The record does not establish that the petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the individual must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.